

**Executive Summary – Enforcement Matter – Case No. 42621**  
**Roger Gomez dba Optimum Calves**  
**RN104925334**  
**Docket No. 2011-1769-MLM-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MLM - IHW and WQ

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Optimum Calves, 250 Farm-to-Market Road 3125, near Muleshoe, Bailey County

**Type of Operation:**

Dairy calf feeding operation

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** February 17, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$9,000

**Amount Deferred for Expedited Settlement:** \$1,800

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$1,200

**Total Due to General Revenue:** \$6,000

Payment Plan: 6 payments of \$1,000 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 42621**  
**Roger Gomez dba Optimum Calves**  
**RN104925334**  
**Docket No. 2011-1769-MLM-E**

***Investigation Information***

**Complaint Date(s):** July 29, 2011

**Complaint Information:** Alleged that the Respondent was stockpiling dead animals.

**Date(s) of Investigation:** August 9, 2011

**Date(s) of NOE(s):** September 9, 2011

***Violation Information***

1. Failed to collect carcasses within 24 hours of death and properly dispose of the carcasses within three days of death. Specifically, there was a mortality management area containing approximately 2,500 cubic yards of manure and cattle carcasses in various states of decomposition and multiple cattle carcasses were exposed at the surface with a large number of fly larvae and flies present on and near the cattle carcasses [30 TEX. ADMIN. CODE § 321.36(l) and TCEQ General Permit No. TXG920817, Part III.A.10(c)].

2. Failed to notify the Executive Director that the storage, processing, or disposal activities of industrial solid waste are planned, at least 90 days prior to engaging in such activities. Specifically, approximately 750 cubic yards of waste, including veterinary supplies, feed sacks, wood debris, plastic buckets, a plastic 55-gallon drum, metal debris, and other materials were disposed of in an open excavation at the southwest corner of the Facility; and there was a pile containing approximately 200 cubic yards of waste, including wood debris, metal debris, plastic buckets, feed sacks, and other materials located west of the calf hutch, without providing notification to the TCEQ [30 TEX. ADMIN. CODE. § 335.6(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

a. Immediately:

- i. Begin proper collection and disposal of cattle carcasses at the Facility;
- ii. Cease the disposal of additional solid waste at the Facility until compliance with 30 TEX. ADMIN. CODE § 335.6 has been achieved;

b. Within 30 days:

- i. Complete disposal of all previously accumulated cattle carcasses in a manner that will not create a nuisance and/or endanger human health, safety, and the environment;

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**Docket No. 2011-1769-MLM-E**

- ii. Remove all industrial solid waste at the Facility and dispose of the waste at an authorized facility, or submit notification and deed recordation for on-site disposal; and
- c. Within 45 days, submit written certification demonstrating compliance.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Lanae Foard, Enforcement Division,  
Enforcement Team 1, MC 169, (512) 239-2554; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Roger Gomez, President, Optimum Calves, 250 Farm-to-Market Road  
3125, Muleshoe, Texas 79347  
**Respondent's Attorney:** N/A



|              |                 |             |                  |             |                |  |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 12-Sep-2011 | <b>Screening</b> | 26-Sep-2011 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 26-Sep-2011 |                  |             |                |  |

|  |                                |                           |       |
|--|--------------------------------|---------------------------|-------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                                |                           |       |
| <b>Respondent</b>                      | Roger Gomez dba Optimum Calves |                           |       |
| <b>Reg. Ent. Ref. No.</b>              | RN104925334                    |                           |       |
| <b>Facility/Site Region</b>            | 2-Lubbock                      | <b>Major/Minor Source</b> | Minor |

|  |                                |                              |                    |
|--|--------------------------------|------------------------------|--------------------|
| <b>CASE INFORMATION</b>                |                                |                              |                    |
| <b>Enf./Case ID No.</b>                | 42621                          | <b>No. of Violations</b>     | 2                  |
| <b>Docket No.</b>                      | 2011-1769-MLM-E                | <b>Order Type</b>            | 1660               |
| <b>Media Program(s)</b>                | Industrial and Hazardous Waste | <b>Government/Non-Profit</b> | No                 |
| <b>Multi-Media</b>                     | Water Quality                  | <b>Enf. Coordinator</b>      | Lanae Foard        |
|  |                                | <b>EC's Team</b>             | Enforcement Team 1 |
| <b>Admin. Penalty \$ Limit Minimum</b> |                                | \$0                          | <b>Maximum</b>     |
|  |                                |                              | \$10,000           |

|  |   |                                   |                                |
|--|---|-----------------------------------|--------------------------------|
| <b>Penalty Calculation Section</b>   |   |                                   |                                |
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>  |   |                                   | <b>Subtotal 1</b>              |
|  |   |                                   | \$6,000                        |
| <b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>   |   |                                   |                                |
| <small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>  |   |                                   |                                |
| <b>Compliance History</b>  |   | <b>50.0%</b> Enhancement          | <b>Subtotals 2, 3, &amp; 7</b> |
|  |   |                                   | \$3,000                        |
| Notes  | Enhancement for two NOVs with similar violations and two orders with denial of liability. |                                   |                                |
| <b>Culpability</b>   | No  | <b>0.0%</b> Enhancement           | <b>Subtotal 4</b>              |
|  |   |                                   | \$0                            |
| Notes  | The Respondent does not meet the culpability criteria.                                    |                                   |                                |
| <b>Good Faith Effort to Comply Total Adjustments</b>   |   |                                   | <b>Subtotal 5</b>              |
|  |   |                                   | \$0                            |
| <b>Economic Benefit</b>  |   | <b>0.0%</b> Enhancement*          | <b>Subtotal 6</b>              |
|  |   |                                   | \$0                            |
| <div style="display: flex; justify-content: space-between;"> <span>Total EB Amounts</span> <span>\$354</span> </div> <div style="display: flex; justify-content: space-between;"> <span>Approx. Cost of Compliance</span> <span>\$10,025</span> </div> |   | *Capped at the Total EB \$ Amount |                                |
| <b>SUM OF SUBTOTALS 1-7</b>  |   |                                   | <b>Final Subtotal</b>          |
|  |   |                                   | \$9,000                        |
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>  |   | <b>0.0%</b>                       | <b>Adjustment</b>              |
|  |   |                                   | \$0                            |
| Notes  |   |                                   |                                |
|  |   |                                   | <b>Final Penalty Amount</b>    |
|  |   |                                   | \$9,000                        |
| <b>STATUTORY LIMIT ADJUSTMENT</b>  |   |                                   | <b>Final Assessed Penalty</b>  |
|  |   |                                   | \$9,000                        |
| <b>DEFERRAL</b>  |   | <b>20.0%</b> Reduction            | <b>Adjustment</b>              |
|  |   |                                   | -\$1,800                       |
| <small>Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>  |   |                                   |                                |
| Notes  | Deferral offered for expedited settlement.  |                                   |                                |
| <b>PAYABLE PENALTY</b>   |   |                                   | <b>\$7,200</b>                 |

Screening Date 26-Sep-2011

Docket No. 2011-1769-MLM-E

PCW

Respondent Roger Gomez dba Optimum Calves

Policy Revision 2 (September 2002)

Case ID No. 42621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104925334

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Lanae Foard

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

| Component                     | Number of...   | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs                          | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )  | 2                 | 10%     |
|                               | Other written NOVs   | 0                 | 0%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )  | 2                 | 40%     |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0                 | 0%      |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )                              | 0                 | 0%      |
|                               | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government  | 0                 | 0%      |
| Convictions                   | Any criminal convictions of this state or the federal government ( <i>number of counts</i> )   | 0                 | 0%      |
| Emissions                     | Chronic excessive emissions events ( <i>number of events</i> )   | 0                 | 0%      |
| Audits                        | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )     | 0                 | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )  | 0                 | 0%      |
| Please Enter Yes or No        |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

Adjustment Percentage (Subtotal 2) 50%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for two NOVs with similar violations and two orders with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 50%

Screening Date 26-Sep-2011

Docket No. 2011-1769-MLM-E

PCW

Respondent Roger Gomez dba Optimum Calves

Policy Revision 2 (September 2002)

Case ID No. 42621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104925334

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.36(I) and Texas Commission on Environmental Quality ("TCEQ") General Permit No. TXG920817, Part III.A.10(c)

Violation Description

Failed to collect carcasses within 24 hours of death and properly dispose of the carcasses within three days of death, as documented during an investigation conducted on August 9, 2011. Specifically, there was a mortality management area containing approximately 2,500 cubic yards of manure and cattle carcasses in various states of decomposition and multiple cattle carcasses were exposed at the surface with a large number of fly larvae and flies present on and near the cattle carcasses.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       |
|-----------|-------|----------|-------|
|           | Major | Moderate | Minor |
| Actual    |       | X        |       |
| Potential |       |          |       |

Percent 25%

## &gt;&gt; Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               |       |          |       |

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed protective levels.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 2

48 Number of violation days

mark only one with an x

|              |   |
|--------------|---|
| daily        |   |
| weekly       |   |
| monthly      | X |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event |   |

Violation Base Penalty \$5,000

Two monthly events are recommended from the investigation date (August 9, 2011) to the screening date (September 26, 2011).

## Good Faith Efforts to Comply

0.0% Reduction

\$0

|               | Before NOV | NOV to EDPRP/Settlement Offer |
|---------------|------------|-------------------------------|
| Extraordinary |            |                               |
| Ordinary      |            |                               |
| N/A           | X          | (mark with x)                 |

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$353

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

# Economic Benefit Worksheet

**Respondent** Roger Gomez dba Optimum Calves

**Case ID No.** 42621

**Reg. Ent. Reference No.** RN104925334

**Media** Industrial and Hazardous Waste

**Violation No.** 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$  |           |               |            |     |                |               |           |

## Delayed Costs

|                          |          |            |             |      |       |     |       |
|--------------------------|----------|------------|-------------|------|-------|-----|-------|
| Equipment                |          |            |             | 0.00 | \$0   | \$0 | \$0   |
| Buildings                |          |            |             | 0.00 | \$0   | \$0 | \$0   |
| Other (as needed)        |          |            |             | 0.00 | \$0   | \$0 | \$0   |
| Engineering/construction |          |            |             | 0.00 | \$0   | \$0 | \$0   |
| Land                     |          |            |             | 0.00 | \$0   | n/a | \$0   |
| Record Keeping System    |          |            |             | 0.00 | \$0   | n/a | \$0   |
| Training/Sampling        |          |            |             | 0.00 | \$0   | n/a | \$0   |
| Remediation/Disposal     | \$10,000 | 9-Aug-2011 | 23-Apr-2012 | 0.71 | \$353 | n/a | \$353 |
| Permit Costs             |          |            |             | 0.00 | \$0   | n/a | \$0   |
| Other (as needed)        |          |            |             | 0.00 | \$0   | n/a | \$0   |

**Notes for DELAYED costs**

Estimated cost to properly dispose of the cattle carcasses. Date required is the investigation date. Final date is the expected date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

|                               |  |  |  |      |     |     |     |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal                      |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Personnel                     |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  |  | 0.00 | \$0 | \$0 | \$0 |

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$10,000

**TOTAL**

\$353



Screening Date 26-Sep-2011

Docket No. 2011-1769-MLM-E

PCW

Respondent Roger Gomez dba Optimum Calves

Policy Revision 2 (September 2002)

Case ID No. 42621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104925334

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Lanae Foard

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code. § 335.6(a)

## Violation Description

Failed to notify the Executive Director that the storage, processing, or disposal activities of industrial solid waste are planned, at least 90 days prior to engaging in such activities, as documented during an investigation conducted on August 9, 2011. Specifically, approximately 750 cubic yards of waste, including veterinary supplies, feed sacks, wood debris, plastic buckets, a plastic 55-gallon drum, metal debris, and other materials were disposed of in an open excavation at the southwest corner of the Facility; and there was a pile containing approximately 200 cubic yards of waste, including wood debris, metal debris, plastic buckets, feed sacks, and other materials located west of the calf hutch, without providing notification to the TCEQ.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       |
|-----------|-------|----------|-------|
|           | Major | Moderate | Minor |
| Actual    |       |          |       |
| Potential |       |          |       |

Percent 0%

## &gt;&gt; Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               | x     |          |       |

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

48 Number of violation days

|                         |              |   |
|-------------------------|--------------|---|
| mark only one with an x | daily        |   |
|                         | weekly       |   |
|                         | monthly      |   |
|                         | quarterly    |   |
|                         | semiannual   |   |
|                         | annual       |   |
|                         | single event | x |

Violation Base Penalty \$1,000

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

|               |   |               |
|---------------|---|---------------|
| Extraordinary |   |               |
| Ordinary      |   |               |
| N/A           | x | (mark with x) |

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,500

This violation Final Assessed Penalty (adjusted for limits) \$1,500

# Economic Benefit Worksheet

**Respondent** Roger Gomez dba Optimum Calves  
**Case ID No.** 42621  
**Reg. Ent. Reference No.** RN104925334  
**Media** Industrial and Hazardous Waste  
**Violation No.** 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

No commas or \$

## Delayed Costs

|                          |      |            |             |      |     |     |     |
|--------------------------|------|------------|-------------|------|-----|-----|-----|
| Equipment                |      |            |             | 0.00 | \$0 | \$0 | \$0 |
| Buildings                |      |            |             | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed)        |      |            |             | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction |      |            |             | 0.00 | \$0 | \$0 | \$0 |
| Land                     |      |            |             | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System    |      |            |             | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling        |      |            |             | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal     |      |            |             | 0.00 | \$0 | n/a | \$0 |
| Permit Costs             |      |            |             | 0.00 | \$0 | n/a | \$0 |
| Other (as needed)        | \$25 | 9-Aug-2011 | 23-Apr-2012 | 0.71 | \$1 | n/a | \$1 |

Notes for DELAYED costs

Estimated cost to update procedures to ensure that notification is made at least 90 days prior to disposing of industrial waste on site. Date required is the investigation date. Final date is the expected date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

|                               |  |  |  |      |     |     |     |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal                      |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Personnel                     |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  |  | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$25

**TOTAL**

\$1

## Compliance History

|                                     |             |                |                            |                    |
|-------------------------------------|-------------|----------------|----------------------------|--------------------|
| Customer/Respondent/Owner-Operator: | CN603016502 | GOMEZ, ROGER   | Classification:<br>AVERAGE | Rating: 38.33      |
| Regulated Entity:                   | RN104925334 | OPTIMUM CALVES | Classification: AVERAGE    | Site Rating: 38.33 |

|   |  |        |                |
|---|--|--------|----------------|
| ID Number(s):   | STORMWATER                               | PERMIT | TXR15LL56      |
|   | WASTEWATER AGRICULTURE                   | PERMIT | TXG920817      |
| Location:   | 250 FM 3125, MULESHOE, TX, 79347         |        |                |
| TCEQ Region:  | REGION 02 - LUBBOCK                      |        |                |
| Date Compliance History Prepared:   | September 23, 2011                       |        |                |
| Agency Decision Requiring Compliance History:   | Enforcement                              |        |                |
| Compliance Period:  | September 23, 2006 to September 23, 2011 |        |                |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History |  |        |                |
| Name:   | Lanae Foard                              | Phone: | (512) 239-2554 |

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator?  
N/A
4. If Yes, who was/were the prior owner(s)/operator(s)?  
N/A
5. When did the change(s) in owner or operator occur?  
N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 03/05/2007

ADMINORDER 2006-1231-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.33(a)

Description: Failure to obtain authorization to construct control facilities and operate a CAFO under a water quality general permit or individual permit.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 321, SubChapter B 321.31(a)

Description: Failure to prevent the unauthorized discharge of agricultural wastewater from a concentrated animal feeding operation ("CAFO").

Effective Date: 02/08/2008

ADMINORDER 2007-1213-AGR-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 321, SubChapter B 321.31(a)

Description: Failed to prevent the unauthorized discharge of agricultural wastewater from a CAFO.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(a)(1)

Rqmt Prov: Part III.A.1(a) PERMIT

Description: Failure to develop a Pollution Prevention Plan (PPP) for the CAFO

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 06/06/2008 (657275)

2 06/10/2008 (680668)

3 05/05/2009 (743960)

4 08/10/2009 (749812)

5 08/01/2009 (763373)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/03/2008 (618988)

CN603016502

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.36(l)  
Part III.A.10.(c) PERMIT

Description: Failure to properly dispose of carcasses.

Date: 05/05/2009 (743960)

CN603016502

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.36(a)  
Part III.A.1 PERMIT

Description: Failure to prepare and maintain a complete Pollution Prevention Plan (PPP).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(d)  
Part IV.A. PERMIT

Description: Failure to keep required records.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(e)  
Part IV.B. PERMIT

Description: Failure to submit required reports.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.6(a)

Description: Failure to obtain a permit or other TCEQ authorization before storing, processing,  
or disposing of solid waste.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ROGER GOMEZ DBA OPTIMUM  
CALVES  
RN104925334**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-1769-MLM-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Roger Gomez dba Optimum Calves ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a dairy calf feeding operation located at 250 Farm-to-Market Road 3125 near Muleshoe, Bailey County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 14, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Nine Thousand Dollars (\$9,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Two Hundred Dollars (\$1,200) of the administrative penalty and One Thousand Eight Hundred Dollars (\$1,800) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Dollars (\$6,000) of the administrative penalty shall be payable in six monthly payments of One Thousand Dollars (\$1,000) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to collect carcasses within 24 hours of death and properly dispose of the carcasses within three days of death, in violation of 30 TEX. ADMIN. CODE § 321.36(l) and TCEQ General Permit No. TXG920817, Part III.A.10(c), as documented during an investigation conducted on August 9, 2011. Specifically, there was a mortality management area

containing approximately 2,500 cubic yards of manure and cattle carcasses in various states of decomposition and multiple cattle carcasses were exposed at the surface with a large number of fly larvae and flies present on and near the cattle carcasses.

2. Failed to notify the Executive Director that the storage, processing, or disposal activities of industrial solid waste are planned, at least 90 days prior to engaging in such activities, in violation of 30 TEX. ADMIN. CODE. § 335.6(a), as documented during an investigation conducted on August 9, 2011. Specifically, approximately 750 cubic yards of waste, including veterinary supplies, feed sacks, wood debris, plastic buckets, a plastic 55-gallon drum, metal debris, and other materials were disposed of in an open excavation at the southwest corner of the Facility; and there was a pile containing approximately 200 cubic yards of waste, including wood debris, metal debris, plastic buckets, feed sacks, and other materials located west of the calf hutch, without providing notification to the TCEQ.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Roger Gomez dba Optimum Calves, Docket No. 2011-1769-MLM-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order:
    - i. Begin proper collection and disposal of cattle carcasses at the Facility, in accordance with 30 TEX. ADMIN. CODE § 321.36 and TCEQ General Permit Part III.A.10(c);
    - ii. Cease the disposal of additional solid waste at the Facility, until compliance with 30 TEX. ADMIN. CODE § 335.6 has been achieved;
  - b. Within 30 days after the effective date of this Agreed Order:

- i. Complete disposal of all previously accumulated cattle carcasses in a manner that will not create a nuisance and/or endanger human health, safety, and the environment, in accordance with 30 TEX. ADMIN CODE § 321.36 and TCEQ General Permit Part III.A.10(c);
- ii. Remove all industrial solid waste at the Facility and dispose of the waste at an authorized facility, or submit notification and deed recordation for on-site disposal; and
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.b.ii.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste and Water Sections, Manager  
Lubbock Regional Office  
Texas Commission on Environmental Quality  
5012 50th Street, Suite 100  
Lubbock, Texas 79414-3421

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a



violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

R. D. Hyle  
For the Executive Director

3/2/12  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Roger Gomez  
Signature

1/3/2012  
Date

Roger Gomez  
Name (Printed or typed)  
Authorized Representative of  
Roger Gomez dba Optimum Calves

President  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.